

REMARKS/ARGUMENTS

Claims 1-8 and 10-32 are active. Claims 24-27 stand withdrawn.

Support for the amendment to Claims 1 24 and 28 is found on page 12, lines 14-16 of the specification.

No new matter is believed to have been added.

In the Action on page 2, a discussion of alleged defective Oath is noted. However, as explained in Applicants previous remarks at page 7, the interlineations noted thereon was dated and signed by the inventor who made the change, noting that the date and signature of the inventor is noted both under the interlineations and concurrent with the signature in the second block. Accordingly, Applicants request that the Declaration on file be accepted.

The rejection of Claims 30-32 under 35 USC 112, second paragraph is traversed because the processes set forth in those claims are not confusing. It is true that Claim 28 is directed to a method of using. Part of that method is to wet the article. Accordingly, one would certainly understand that the wetted article in Claim 28 had to have been made for it to be used. Thus, referring to the article made from Claim 28 in Claim 30 is not confusing.

Withdrawal of the rejection is requested.

The pending claims in this application are directed to an article composed of a substrate (such as a non-woven) and a substantially anhydrous composition with at least 10% oil, an emulsifying surfactant which has an HLB of 8 to 14 and is soluble in oil and a hydrophilic gelling agent.

In the Official Action, the Examiner has maintained the rejection of Claims 1-14, 16-23, and 28-32 as being anticipated by McAtee (WO 99/13861—cited in the specification on page 4, line 13) and Claim 15 as being obvious in view of McAtee. McAtee is directed to substantially dry cleansing articles that include a cleansing or foaming surfactant and conditioning agents, including oils. McAtee also describes a number of optional ingredients, including hydrophilic thickeners and emulsifiers (see pages 37-38). McAtee's emulsifiers are described as having a "relatively low HLB value" on the order of 1 to about 7. In addition, McAtee's definition of "substantially dry" (see page 9, lines 23-29) is generally less than 10% (compare to the definition of "substantially anhydrous" in the present application on page 4, lines 25-30).

While Applicants previously presented arguments and evidence based on the selection of particular emulsifiers with certain HLB values, the overlap in HLB from McAtee and the mere suggestion to include such emulsifiers in McAtee's article has caused the Examiner to maintain the rejection.

Referencing again the previously submitted Rule 132 Declaration, it is noted that McAtee does not specifically describe using emulsifying surfactants. Indeed, as discussed on page 18, lines 4-7 of the above-identified application, the emulsifying surfactant must be soluble in oil and have an HLB of from 8-14 while the emulsifiers McAtee suggested as optional components only have an HLB of from 1.5 to 6 (see page 38, line 13 of McAtee). Thus, the claims are not anticipated by McAtee.

Further, unlike the articles of McAtee, who aims to achieve a foamed composition after mixing with water, the article composed of a substrate and the composition defined in the claims achieves an emulsion when mixed with water giving the consumer a creamy composition for use as described in the application.

By including an emulsifying surfactant rather than the lathering surfactant as required by McAtee, one is able to now achieve a dry article giving a creamy and thick composition after it has been wetted (described in the application at page 4, lines 16-20 and page 5, lines 2-3). The resultant composition gives a good feeling to the skin as discussed on page 6, lines 25-27 of the application.

To illustrate that lathering surfactants as required by McAtee do not emulsify the composition as the emulsifying surfactants being claimed, experiments, described in the Declaration were performed.

In the first experiment, decyl glucoside (which is a lathering surfactant and used in examples 1-10 of McAtee) was used in place of the surfactants in example 1 as described on pages 20-21 of the application.

It was observed that unlike Example 1 in the specification, the composition including the lathering surfactant of McAtee in place of the emulsifying surfactant was heterogeneous and remained insoluble when water was added to the compositions. The heterogeneity of this comparative example 1 is illustrated in the Photograph attached to the Declaration labeled "Photo I."

To illustrate the importance of the HLB of the emulsifying surfactant, another set of experiments were conducted. In these experiments, a surfactant with an HLB of 5-6 (Arlacel P135—PEG-dipolyhydroxystearate) was used in place of the emulsifying surfactants used in Example 1. A side-by-side alignment of the compositions is presented in the Declaration.

After adding water to these compositions, it was observed that unlike Example 1 from the application, the comparative example having a surfactant with an HLB of 5-6, yielded a composition with the aqueous and oil phases separated. The Example 1 composition, in contrast, had a milky appearance when water was added. The heterogeneity of the Comparative Example 2 composition is shown in the Declaration photograph labeled "Photo

II” and the milky appearance of the Example 1 composition is shown in the Declaration photograph labeled as “Photo III.”

Further illustrative of these differences, the Example 1 and Comparative Example 2 compositions were viewed by microscopy (shown in the Declaration “photo IV”). In this comparison, the Example 1 composition was observed to be homogeneous (lower picture) whereas the Comparative Example 2 composition (upper two pictures) exhibited clear heterogeneity between the aqueous and oil phases could be observed.

As discussed in the Declaration, these results are important because they demonstrate to prepare a dry article which yields a creamy and thick composition after the addition of water, not only is the type of surfactant important (emulsifying vs. lathering) the HLB of the emulsifying surfactant is important as well. As evident in the data and the discussion provided in the specification, the effect is not merely one of degree but a different effect altogether. That is with the emulsifying surfactants having an HLB of from 8 -14, one can achieve this desired result whereas with other surfactants this was not achievable.

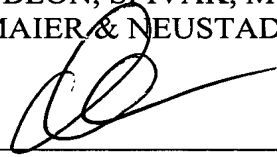
As McAtee emphasizes the importance of including lathering surfactants and makes only a passing mention at optional ingredients such as emulsifiers, and, in fact, does not mention the importance of the HLB, the data presented are deemed to be surprising.

In view of the above, Applicants request that the rejections under 102(b) and 103(a) be withdrawn.

Applicants also request a Notice of Allowance for all pending claims.

Respectfully submitted,

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